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ORAL ARGUMENT HELD ON NOVEMBER 12, 2004

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AT&T CORP., **Petitioner,** **v.** **FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES of AMERICA,** **Respondents.**	**Case No. 03-1431**

AT&T'S OPPOSITION TO MOTION OF INGA INTEVENORS FOR LEAVE TO FILE SUPPLEMENTAL PLEADINGS OUT OF TIME

Petitioner AT&T Corp. ("AT&T") respectfully submits this opposition to the motion to make "out of time" filings that intervenors 800 Discounts, Inc., Winback & Conserve Program, Inc., One Stop Financial, Inc., and Group Discounts, Inc. (the "Inga Intervenors") filed in this case on December 6, 2004. In this motion, the Inga Intervenors seek leave both to file an attached motion that makes various substantive arguments and also to file "a supplemental brief to clarify the factual record." For the reasons stated below, the Court should deny these requests.

The Inga Intervenors were specifically authorized by the Court's Order of April 8, 2004, to file an intervenors' brief on June 1, 2004. However, after reviewing AT&T's petitioner's brief and the respondents' brief of the FCC, the Inga Intervenors determined that they would not file an intervenors' brief and formally so advised the Court and the parties. *See* Mtn. at 3. AT&T's reply brief thus addressed only the arguments made in the FCC's brief. Now, five months after

the briefing in this case was completed and nearly a month after the oral argument, the Inga Intervenors seek leave to file a 12 page motion that makes an array of "factual" arguments that were made by the Inga Intervenors below and that the FCC expressly declined to address in its Declaratory Order under review. The Inga Intervenors further seek leave to file a supplemental brief that, presumably, would further amplify on these factual arguments.

All these requests should be denied. Quite apart from the fact that none of the matters that the Inga Intevenors raise have any pertinence to the grounds of the FCC's Declaratory Order or to the narrow issues before the Court, *see infra,* the Inga Intervenors previously had an opportunity to present to the Court any and all arguments that they believed to be germane to any aspect of this case, but they declined to do so. The Inga Intervenors now attempt to justify their belated filing by asserting that their motion addresses "factual matters" that were "raised only during oral argument" and "hence, could not have been addressed before now." Mtn. at 1. But that is simply untrue.

The Inga Intervenors' primary argument is that AT&T purportedly "misstated" the terms of Section 2.1.8 of the tariff when AT&T's counsel stated at the oral argument that the tariff requires the assumption of unexpired portions of volume commitments that comprise the CSTP II plans. Mtn. at 4-8. However, this point was not raised for the first time at oral argument, but was expressly made in AT&T's briefs. *See, e.g.,* AT&T's Petitioner's Brief, p. 18. Nor did AT&T here "misstate" the terms of the tariff. The tariff expressly conditions transfers of service on the new customer's assumption of "all obligations of the former customer at the time of transfer" and the unexpired portions of volume commitments is such an obligation. That is why the FCC recognized that PSE's failure to assume the volume commitments would violate Section 2.1.8 if the provision "govern[ed]" the transfers at issue and rested its decision on its belief that

transfers of "traffic" are not governed by this provision of the tariff.

The remainder of the Inga Intervenors' filing is devoted to disputing that the CCI-PSE transaction was designed to evade the volume commitments and liability for shortfall charges under the CSTP II plans. But this issue, too, was not raised for the first time at oral argument. To the contrary, AT&T's opening brief (*e.g.*, pp. 1-3) fully set forth the facts that established that the purpose and effect of the transaction was to evade tariffed shortfall charges, and FCC expressly assumed this to be true in the order under review. *Declaratory Ruling*, ¶¶ 11, 12, 17 (JA 8-9, 12). So the Inga Intervenors had every opportunity to address their different view of the facts in a timely filed intervenors' brief. Moreover, while the Inga Intervenors also assert here that their filing is designed to correct alleged factual "misstatements" or "omissions" of AT&T's counsel during the oral argument (Mtn. at 2), the Inga Intervenors do not identify any factual statements by AT&T's counsel that were incorrect.

Further, the Inga Intervenors' requests are peculiarly inappropriate because the matters that they seek to address are disputed factual issues that have no relevance to the grounds for the FCC's Declaratory Order and that the FCC expressly declined to address. The primary ground for the Order was the FCC's conclusion that Section 2.1.8 of the Tariff does not apply to transfers of all the "traffic" from CSTP plans without the associated liabilities. AT&T, of course, contends that this interpretation is incorrect because the tariff provision applies to all transfers of "WATS service" and because the transfer of WATS traffic and end user locations is a transfer of the underlying "service" (that gives rise to the traffic to the locations). The fundamental question in the appeal is therefore whether a transfer of traffic is a transfer of "service," and if the Court agrees with AT&T's argument on this issue, it would reverse on this legal ground without addressing any other matter.

The various arguments that the Inga Intervenors make have nothing to do with this issue and were therefore expressly not addressed in the FCC Order under review. The Inga Intervenors are simply making impermissible claims that the FCC's Order should be upheld on *post hoc* grounds that are not advanced in the Order.

First, the Inga Intervenors assert that AT&T previously allowed other CSTP customers to transfer all the revenue generating traffic on a plan without requiring transfer of the plan's obligations. But it was a hotly disputed factual issue whether AT&T had engaged in such conduct, and the FCC order under review expressly declined to address these issues on the ground that the declaratory ruling proceedings cannot be used to litigate contested factual issues. *Declaratory Ruling,* ¶ 18 n.87 (JA 13). Further, if AT&T's view of § 2.1.8 of the tariff is accepted, the Inga Intervenors' allegations are simply a claim that AT&T previously violated its tariff – which is irrelevant to AT&T's right to enforce its tariff against other parties. *See AT&T v. Central Office Telephone Co.,* 525 U.S. 214, 226 (1999). Thus, the FCC stated that Inga's allegations would, at most, support claims that AT&T engaged in unlawful discrimination in violation of Section 202 of the Communications Act, which is an issue that the FCC did not address in its order and would be open on remand if the Court reverses the FCC's interpretation of Section 2.1.8. *Declaratory Ruling,* ¶ 18 n.87 (JA 13). These Inga allegations are therefore irrelevant.

Second, the Inga Intervenors made claims regarding the retroactive effect of a tariff transmittal (No. 8179) that was intended to do no more than codify existing requirements and that was withdrawn by AT&T before it took effect. These claims have no conceivable relevance to any issue in this proceeding, and the FCC expressly declined to address these arguments in the Order under review. *Declaratory Ruling,* ¶ 15 (JA 11).

Third, to support their argument that the transaction was bona fide, the Inga Intervenors argue that the plans at issue were somehow pre-June 17, 1994 plans that can never be subject to shortfall liabilities. But AT&T obviously contended otherwise, and the FCC expressly declined to address this issue both because it was a disputed factual question outside the scope of this declaratory proceeding and because it is irrelevant to the grounds of the Order. *Declaratory Ruling*, ¶ 20 n.94 (JA 14).

Finally, the Inga Intervenors make a series of arguments to the effect that the CCI to PSE transfer would not have adversely affected AT&T's ability to obtain payment for any services. Mtn. at 6-11. Here, too, the Inga Intervenors' claims are irrelevant, for the FCC Order did not address these issues, but expressly assumed that the transfers would result in the fraudulent evasion of tariffed charges. *See Declaratory Ruling* ¶¶ 11, 12, 17 (JA 8-9, 12). The Inga Intervenors' claims also are otherwise misguided. While Inga appears to admit that PSE would have had no liability for shortfall charges under the proposed transfers to traffic without the plans, the Inga Intervenors assert that liabilities for outstanding indebtedness were transferred to PSE. The Inga Intervenors miss the point. Under the FCC's interpretation of Section 2.1.8 of AT&T's tariff, transfers of "traffic alone" are not governed by this tariff provision and thus are not subject to any preconditions. Accordingly, transfers of traffic could be effected without the transferee's assumption of *either* the outstanding indebtedness or the shortfall liabilities. The Inga Intervenors also assert that the tariff gives AT&T no recourse against the end user locations in the event of default. While this, too, is an issue that the FCC expressly declined to address (*Declaratory Ruling*, ¶ 20 n.94 (JA 14)), the tariff expressly provides that "any penalty for shortfall and/or termination liability will be . . . billed to the individual locations." JA 418.

For the reasons stated, the motion of the Inga Intervenors should be denied.

Respectfully submitted,

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December 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2004, I caused copies of the foregoing Opposition of Petitioner AT&T Corp. to Motion of Inga Intervenors for Leave to File Supplemental Pleadings Out of Time to be served by first class mail on all parties by mailing copies, postage prepaid, to the following persons at the addresses listed below.

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EXHIBIT M

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC.,	:	HON. NICHOLAS H. POLITAN, U.S.D.J.
AND	:	
WINBACK & CONSERVE PROGRAM, INC., ONE STOP FINANCIAL, INC., GROUP DISCOUNTS, INC., 800 DISCOUNTS, INC.,	:	CIVIL ACTION NO. 95-908 (NHP)
AND	:	
PUBLIC SERVICE ENTERPRISES OF PENNSYLVANIA, INC.,	:	
Plaintiffs,	:	
v.	:	
AT&T CORP.,	:	
Defendant.	:	

AT&T'S BRIEF IN CONNECTION WITH THE REHEARING ON PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

AT&T submits this brief in response to the Court's request for a discussion of two legal issues in connection with the rehearing of plaintiffs' application for a preliminary injunction: 1) the power of a district court simultaneously to issue a preliminary injunction in an action and to refer the ultimate decision on the merits on the grounds of primary jurisdiction; and 2) the appropriate level of security should an injunction be issued. AT&T also demonstrates why the Court should in no event grant injunctive relief.

In addition, AT&T submits the Second Supplemental Certification of Richard R. Meade ("Meade 2d Supp. Cert.") in response to the Court's request for information concerning: 1) why AT&T withdrew Tariff Transmittal No. 8179; 2) why the issue presented in Tariff Transmittal No. 8179 was combined with other issues in Tariff Transmittal No. 9229; and 3) where Tariff Transmittal No. 9229 contains the issue "referred" to the Federal Communications Commission ("FCC") in Tariff Transmittal No. 8179.

I. THE COURT DOES NOT POSSESS THE AUTHORITY TO BOTH GRANT A PRELIMINARY INJUNCTION AND SIMULTANEOUSLY REFER AN ISSUE TO THE FCC.

The Court has requested that the parties brief the question whether a district court may simultaneously grant preliminary injunctive relief and refer an issue to an administrative agency on the ground of primary jurisdiction. Although there appears to be no authority directly addressing this precise issue, logic and

common sense strongly suggest that a court should not grant preliminary injunctive relief and then refer an issue on the ground of primary jurisdiction for an ultimate decision. Such a ruling would be inconsistent with the requirement that an applicant for preliminary relief demonstrate a likelihood of success on the merits. Consequently, this Court should decline to issue a preliminary injunction and instead rely on the powers of the FCC to issue injunctive relief.

Among the four prerequisites to the grant of a preliminary injunction is a demonstration by the moving party of a reasonable likelihood that it will succeed on the ultimate merits of the case. *Gerardi v. Pelullo*, 16 F.3d 1363, 1373 (3d Cir. 1994); *see S&R Corp. v. Jiffy Lube Int'l, Inc.*, 968 F.2d 371, 374 (3d Cir. 1992).[1] The inability of a party to make such a demonstration precludes the granting of preliminary relief. *See, e.g., Bell v. Kidan*, 836 F. Supp. 125 (S.D.N.Y. 1993) (denying preliminary injunction because applicant had not shown likelihood of success on the merits); *Broadcast Arts Productions, Inc. v. Screen Actors Guild, Inc.*, 673 F. Supp. 701 (S.D.N.Y. 1987) (same holding).

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[1]As set forth in recent cases in this Circuit, the requirements are: (1) the likelihood that the applicant will prevail on the merits at final hearing; (2) the extent to which the plaintiff is irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is issued; and (4) the public interest. *Jiffy Lube*, 968 F.2d at 374; *accord Opticians Ass'n of Am. v. Independent Opticians of Am.*, 920 F.2d 187, 191-92 (3d Cir. 1990).

The issue that implicates the Court's power to grant injunctive relief in this case is whether it can find that plaintiffs have a "likelihood of success on the merits" while at the same time deferring to the FCC for ultimate resolution of the issue. A determination that an applicant will be likely to succeed on the merits generally results from a court's application of established law to a truncated factual record. Here, the law that the Court must apply on an undeveloped factual record is itself not clear. As the Court noted in its May 19, 1995 Opinion ("Opinion"), the legal issue at the heart of this dispute is "whether a plan and its attendant obligations under a tariff may be separated from its traffic." (Opinion at 15.) The Court then recognized that the question of "what amount of fractionalizing, if any, of plans" the relevant tariff provisions allow is not within the conventional experience of trial courts, but is "inherently within the realm of the Communications Act and its regulatory mechanisms." (*Id.* at 16.) That was true then and is true now.

The Court acknowledged that the FCC, not a district court, has the expertise and experience required to construe and harmonize tariff provisions. (*Id.*) That, too, remains true. That correct assessment undermines a grant of preliminary injunctive relief here. The sensible and correct finding that the Court does *not* have the expertise or experience needed to decide the ultimate merits of the dispute necessarily contradicts a finding that the plaintiffs have a likelihood of success. The prospect of that inconsistent finding precludes granting injunctive relief on

matters on which it lacks the conventional experience to render an ultimate decision.[2]

The ability of the FCC to issue emergent relief obviates the need for the Court to have to make such inconsistent rulings. The Communications Act expressly empowers the FCC to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions," 47 U.S.C. § 154(i), including the ability to afford emergent relief to individual litigants. *United States v. Southwestern Cable Co.*, 392 U.S. 157, 180-181 (1968); *In the Matter of Petitions Filed by the EEOC*, 38 F.C.C. 2d 33, 38-39 (1972). *See also Business Wats, Inc. v. AT&T*, 7 F.C.C.R. 7942 (1992); *In the Matter of Comark Cable Fund 111*, 104 F.C.C. 2d 451 (1985); *In re: Big Valley Cablevision, Inc.*, 85 F.C.C. 2d 973 (1981). That emergent relief includes the issuance of orders for a stay or similar preliminary injunctive relief. *See In re Application of Eldon L. Hueber*, 6 F.C.C.R. 736 (1991). Accordingly, the Court should not now hear a preliminary injunction application on

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[2]Such an inconsistent finding should be avoided especially in cases such as this one, where plaintiffs seek mandatory injunctive relief. Moreover, when the mandatory, preliminary injunctive relief sought will constitute plaintiffs' final relief, such relief should only be granted at the preliminary stage of the proceedings in "rare instances" where the *facts and law* are clearly in favor of the moving party, especially if the grant of the temporary injunction would "in effect give plaintiff the relief which he seeks in the main case." *Miami Beach Fed. Sav. & Loan v. Callader*, 256 F.2d 410 (5th Cir. 1958); *Bricklayers, Masons, et al. v. Lueder Const. Co.*, 346 F. Supp. 558, 561 (D. Neb. 1972) (emphasis added).

a matter which it has properly determined to be suitable for resolution by the FCC on a primary jurisdiction referral.

II. IF THE COURT WERE TO ISSUE AN INJUNCTION, THE INJUNCTION BOND SHOULD BE $15,000,000

A party whose application for a preliminary injunction is granted may be required to post security in order to pay "such costs and damages as may be incurred or suffered by any party who is wrongfully enjoined or restrained." *Fed. R. Civ. P.* 65(c). The posting of a bond is required when the potential for monetary loss is substantial. *System Operations v. Scientific Games Dev. Corp.*, 555 F.2d 1131 (3d Cir. 1977). This is just such a case.

The harm resulting from an order for AT&T to execute the CCI-PSE transfer is two-fold. First, a transfer of substantially all of the locations on the Plans would have the result of increasing the potential shortfall to AT&T. Second the possibility that CCI will be unable to satisfy its tariffed obligations because it is transferring its principal assets --- the end user accounts --- to PSE would leave CCI with no apparent revenue stream to meet its existing commitments and no apparent assets from which to satisfy potential shortfall liability. These charges are all tariffed obligations, for which CCI, not PSE (which would have the revenue stream to satisfy such charges), would be obligated.

CCI currently has eight CSTP-II plans. (See Second Supplemental Certification of Carl Williams at ¶ 3, filed herewith.) As of November 27, 1995, the traffic run rates on the

CCI plans indicate a projected shortfall of approximately $20.2 million. (*Id.*, ¶ 4.) If all or substantially all of the locations under the plans were transferred to PSE, the amount of the projected shortfall would increase by approximately $13.293 million. (*Id.*, ¶ 5.) Moreover, after transfer of its assets (the locations under the Plans) to PSE, CCI's net worth would decrease and its ability to pay any shortfall charges be diminished proportionately. (*See id.*, ¶ 6.) Thus, if the Court were to grant the requested injunction, and AT&T were to ultimately prevail on the merits, the potential financial loss to AT&T would exceed the projected $13.293 million increased shortfall charge. Accordingly, in the event the Court decides to grant the injunction, AT&T requests that the Court require security in the amount of $15,000,000.[3]

III. EVEN IF THE COURT DETERMINES THAT IT, NOT THE FCC, SHOULD DECIDE THE QUESTION OF PRELIMINARY RELIEF ON THE FRACTIONALIZATION ISSUE, PLAINTIFFS' MOTION SHOULD BE DENIED.

If the Court determines that it should decide the fractionalization issue in the first instance, it should nevertheless deny plaintiffs' application for a preliminary injunction. Plaintiffs' failure to establish two essential prerequisites for preliminary relief --- a likelihood of success on the merits and irreparable harm --- dooms their application. As the Third Circuit has noted,

[3]This is based on a conservative estimate that, absent an asset transfer, CCI would be able to satisfy at least 10% of the current $20.2 million in projected shortfall.

a "[t]o obtain a preliminary injunction, the moving party must demonstrate *both* a likelihood of success on the merits and the probability of irreparable harm if relief is not granted." *Hoxworth v. Blinder Robinson & Co.*, 903 F.2d 186, 197 (3d Cir. 1990) (quoting *Morton v. Beyer*, 822 F.2d 364, 367 (3d Cir. 1987)) (emphasis in original).

A. Plaintiffs Cannot Show A Likelihood That They Will Succeed On The Merits.

Plaintiffs cannot show that there is a likelihood that they will succeed on the merits. Section 2.2.4.A.2 of the tariff (the anti-fraud provision) permits AT&T to refrain from accommodating schemes whose purpose was to prevent AT&T from collecting tariffed charges from customers.[4] (Meade 2d Supp. Cert., ¶ 5.) Section 2.8.2 allows AT&T to temporarily suspend service for as long as the Customer is in non-compliance with Section 2.2.4.A.2.[5] Section

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[4]Section 2.2.4 of Tariff No. 2 provides, in the relevant part, as follows:

> **Fraudulent Use** - The fraudulent use of, or the intended or attempted fraudulent use of, WATS is prohibited. The following activities constitute fraudulent use:
>
> A. Using or attempting to use WATS with the intent to avoid the payment, either in whole or in part, of any of the Company's tariffed charges by:
>
> * * *
>
> 2. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices, or electronic devices.

[5]Section 2.8.2. of the Tariff No. 2 provides, in the relevant part as follows:

(continued...)

2.5.8 of the tariff (the security deposit provision) permits AT&T to request security from certain customers in order to safeguard AT&T's financial interests.[6] (Meade 2d Supp. Cert., ex. B at 1.)

CCI's proposed transfer of almost all of the locations on the CSTP-II plans ("Plans") to PSE would have transferred most, if not all, of CCI's assets (*i.e.* the revenue stream from the traffic) to PSE without a concomitant transfer of the obligation to pay shortfall charges. (Meade 2d Supp. Cert., ¶ 6.) AT&T refused to execute the transfer of locations on the Plans from CCI to PSE because AT&T believed that this second transfer was part of a scheme by Alfonse Inga to prevent AT&T from collecting potential shortfall charges under the Plans. (See Meade 2d Supp. Cert., ¶ 4.) Alfonse Inga had already represented that he desired to leave

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[5](...continued)
Interference, Impairment or Improper Use - The Company may take immediate action to temporarily suspend service when a Customer violation results in any of the following:

* * *

- circumvents the Company's ability to charge for its services as specified in Section 2.2.4. (Fraudulent Use) preceding, or . . . .

[6]Section 2.5.8 of AT&T F.C.C. Tariff No. 2 reads, in pertinent part:

2.5.8 Deposits - The following deposit provisions are applicable to WATS.

A. To safeguard its interests, the Company will only require a Customer which has a proven history of late payments to the Company or whose financial responsibility is not a matter of record, to make a deposit to be held as a guarantee for the payment of charges.

AT&T with a substantial financial loss and no remedy. (*See* Certifications of Joseph Fitzpatrick and Thomas Umholtz, ¶¶ 4 and 4, respectively, filed March 7, 1995.)[7] AT&T's concern about the apparently fraudulent purpose of the Inga Companies' two-step transaction was memorialized in a letter from AT&T's counsel to counsel for the Inga Companies, whose traffic PSE was to receive indirectly:

> We have reason to believe that Mr. Inga is attempting to transfer end users from existing plans that have over $50 million of commitments. Mr. Inga's efforts to transfer these end users and leave the plans intact with their commitments, but without the ability to satisfy those commitments, appears to us to be an attempt to defraud AT&T by obtaining the benefits of a transfer of service and at the same time deprive AT&T of the commitments made to obtain that service. AT&T will not tolerate that conduct.

Exhibit A to Affidavit of Frederick L. Whitmer (filed March 7, 1995 and attached as exhibit C to the Brown Aff.) The Inga Companies did not answer that letter; neither did CCI post the requested security.

AT&T also had a legitimate concern about such a transaction in light of the high delinquency rate of resellers. (Certification of Carl Williams, ¶¶ 4-9, filed March 20, 1995 and attached as exhibit D to the Brown Aff.) CCI, a new company that had virtually no assets, would have assumed $54 million in annual commitment without having any revenue stream to enable it to pay shortfall charges to AT&T. That fact, combined with CCI's apparent role in Mr. Inga's

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[7]Copies of the Certifications of Joseph Fitzpatrick and Thomas Umholtz are attached as exhibits A and B, respectively, to the Affidavit of Richard H. Brown, III ("Brown Aff."), filed herewith.

scheme, led AT&T to decline to carry out the transaction as proposed by CCI. (Meade 2d Supp. Cert., ¶ 4.) In light of the foregoing, AT&T's decision to refuse to fractionalize the traffic was, and remains, entirely reasonable. CCI's refusal to post security gave AT&T the right to refuse to execute the transfer of the locations and thereby avoid increasing AT&T's financial exposure. It also precludes a finding that plaintiffs have a substantial likelihood of success on the merits.

AT&T's right under the tariff to refuse to execute the CCI-PSE transfer similarly forecloses relief under Section 406 of the Communications Act, even if the Court deems this section to be applicable to CCI-PSE transaction.[8] Although the mandamus writ was abolished by *Fed. R. Civ. P.* 81(b), the rights of the parties under Section 406 are still governed by mandamus principles, which require that the party seeking the mandamus demonstrate that it has a "clear and unequivocal" right to that which it is seeking. *MCI*

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[8]Section 406 of the Federal Communications Act, provides:

> The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a carrier subject to this chapter, of any of the provisions of this chapter which prevent the relator from receiving service . . . to issue a writ or writs of mandamus . . . commanding such carrier to furnish facilities for such communication or transmission to the party applying for the writ . . . .

AT&T's position, as stated more fully in its earlier submissions, is that CCI-PSE's proposed transfer of locations under the CSTP-II plans is not the type of "service" for which this section was enacted to afford mandamus relief.

Communications Corp. v. American Tel. & Tel. Co., 496 F.2d 214, 219 (3d Cir. 1974); *accord Mical Communications, Inc. v. Sprint Telemedia, Inc.*, 1 F.3d 1031, 1036 (10th Cir. 1993). For the reasons described above and given the Court's earlier statement that it needed guidance from the FCC, any putative right of CCI to transfer the locations without posting a security deposit would certainly not be a clear and unequivocal one. Accordingly, relief under Section 406 is inappropriate.

B. Plaintiffs Cannot Show Irreparable Injury.

Plaintiffs' application also fails because there is no *irreparable* harm to plaintiffs. *See, e.g., Frank's GMC Truck Center, Inc. v. General Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988) (reversing preliminary injunction because no irreparable harm); *Bakery Drivers & Sales Local 194 v. Harrison Baking Group, Inc.*, 869 F. Supp. 1168, 1179 (D.N.J. 1994) (no preliminary injunction because no irreparable harm). Indeed, plaintiff Winback has effectively admitted there is no genuine irreparable harm when it has, on more than one occasion, described its supposed injury purely in monetary terms. Most recently, Alfonse G. Inga alleged Winback's injury as being more than $1 million dollars per month. (See Mr. Inga's statement annexed as exhibit C to Winback's July 27, 1995 Brief.) Nowhere in any submission by Winback (or in the other plaintiffs' earlier submissions) is there an injury that can be characterized as "irreparable." Winback's past characterization

of this action as one "about money" (Trans. Mar. 8, 1995, p. 69, l. 14) remains true.

Plaintiffs' alleged injury (loss of revenue or customers due to allegedly not having access to lower prices) is simply an economic loss. Our Court of Appeals has clearly stated that, in such a situation, preliminary injunctive relief is not appropriate. For example, in *Frank's GMC Trucks*, the Third Circuit reversed the preliminary injunction because the applicant's complained-of harm (loss of sales, customers and profits) was, in fact, compensable by money damages. 847 F.2d at 102. *Accord Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). That is this case. Accordingly, given the lack of irreparable harm and plaintiffs' failure to demonstrate a reasonable likelihood of success on the merits, their motion for preliminary relief must be denied.

CONCLUSION

For the foregoing reasons, AT&T urges that plaintiff Winback's reapplication for a preliminary injunction be denied, or, in the

alternative, that if a preliminary injunction is issued, a bond in the amount $15,000,000 be required from plaintiff CCI.

Respectfully submitted,

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By: _____
FREDERICK L. WHITMER
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Dated: November 28, 1995

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused true copies of AT&T Corp.'s Brief, the Second Supplemental Certifications of Richard R. Meade and Carl Williams, and the Affidavit of Richard H. Brown, III to hand delivered to:

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Newark, NJ 07102-5497

I further certify that on this date, I caused a true copies of all of the above papers to be delivered to Fedex for next-day service on:

Richard C. Yeskoo, Esq.
Fabricant & Yeskoo
535 Fifth Avenue
23rd Floor
New York, NY 10016

Charles H. Helein, Esq.
Helein & Associates
8180 Greensboro Drive
McLean, VA 22102

I further certify that on this date, I caused a true copy of the brief and the Certifications of Richard R. Meade and Carl Williams (both without exhibits) to be faxed to the above counsel.

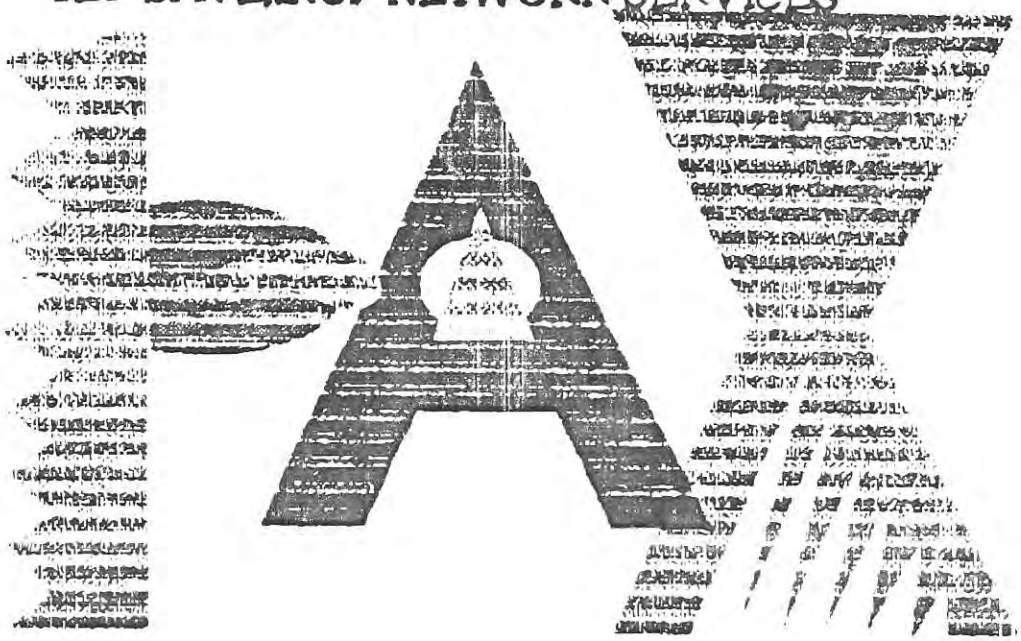
I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

RICHARD H. BROWN, III

DATE: November 28, 1995

EXHIBIT N

TEL-SAVE,INC./NETWORK SERVICES



TO: AL Inga

FROM: Dan Borislow

DATE:

FAX #:

TOTAL PAGES INCLUDING COVER:

CONTACT:

COMMENTS:

ANY QUESTIONS
PLEASE CALL 215-862-1500
THANK YOU AND HAVE A NICE DAY!

MARKETING CONTRACT

Non exclusive Independent Sales Contractor Agreement between Tel-Save/Network Services, (TS/NS), and corporationsowned by Alfonse G. Inga (The Companies), this 21st day of November 1994.

Whereas (The Companies) are transferring over to (TS/NS) accounts from their CSTPII contract onto a contract owned by TS/NS. Previously Plan ID 3053 was also moved to TS/NS, which is also covered by this contract. In consideration of the accounts being moved to TS/NS; The Companies are to receive 80% of the residual compensation for accounts placed with TS/NS which receives from the underlying carrier, (AT&T) +/- any credits/chargebacks which might appear in the future relevant to AT&T commissions.

TS/NS will pay the residual commission income within 15 business days after TS/NS receipt of the funds from the carrier (AT&T).

This contract will survive the parties only as far as compensation paid on the accounts that are placed, even if either party wishes to terminate the agreement.

As long as The Companies accounts stay on a discount plan owned in part by, or affiliated with Daniel Borislow, TS/NS will be obligated to continue paying commissions to The Companies; likewise The Companies will forgo ever being able to have ownership to these accounts again.

The entity that (The Companies) wish to have their commission paid to currently is 800 Discounts, Inc. The Companies may change the paid to entity, but must inform TS/NS at least 30 days prior to changing payee.

This contract will also cover any (1+) long distance that the companies wish to sell for TS/NS subjected to the same agreements as outlined above. The parties below have the authority to sign and bind their respective companies to this contract.

TS/NS agrees not to further contract with THE COMPANIES existing Independent Contractors for the life of this contract. This contract is subjected to Non Disclosure and can only be disclosed by agreement of both parties in writing.

TS/NS has the sole discretion to reject any new sales of accounts made by the companies. TS/NS and The Companies have the right to terminate this contract with 30 days written notice.

X Dan Borislow Pres.
DANIEL BORISLOW TITLE For TelSave/Network Services

X Alfonse G. Inga owner
ALFONSE G. INGA TITLE For (The Companies)

AT&T

Third Floor
4 Campus Drive
Parsippany, NJ 07054-4494

One Stop Financial
55 Main St.
Little Falls, NJ 07424

Attn: Mr. Al Inga

Mr. Inga,

August 21, 1995

Thank you for allowing AT&T, our staff, and I the opportunity to support your business. As discussed, our primary objective is to be a resource for your over-all operation; though initially, our goal is to initiate some form of immediate pricing/service improvement.

Given the competitive pricing nature of your situation, we have been able to obtain more favorable pricing than would typically be provided. Given this is special pricing, we request the content of this proposal be kept confidential.

Your pricing will be computed as follows. . .

OPT-S/TAR 3 with PBA discount = 43%
(1) Free Month Bill Credit = $\frac{8.3\%}{51.3\%}$ ← 51.3%

*List Price/Interstate(Peak)= .261 less (51.3%)= .127 Net
" " " (Off/Peak)= .205 less (51.3%)= .099 Net
*List Price/Interstate 800#(Peak)= .276 less (51.3%)= .126 Net
*" " " (Off/Peak)= .222 less (51.3%)= .101 Net

Note: Above pricing based on average monthly consolidated billing of $200 for a (12) month period.

*List Price/Interstate(Peak)= .252 less (51.3%)= .123 Net
*" " " (Off/Peak)= .200 less (51.3%)= .097 Net
*List Price/Interstate 800#(Peak)= .268 less (51.3%)= .122 Net
*" " " (Off/Peak)= .216 less (51.3%)= .098 Net

Note: Above pricing based on average monthly consolidated billing of $1000 for a (12) month period.

* AT&T personnel coordinate all order processing and logistical activities
* AT&T waives/credits all charges associated with establishing AT&T service

This is simply the first step forward in presenting the value of AT&T. With the assignment of your dedicated support team, our intent is to continue to be an on-going asset toward the achievement of your business goals.

Thank you.

Respectfully,

John Slifka

AT&T

ONLY $200 Commitment

AT&T Option S Agreement

FOR OFFICIAL USE ONLY	
Company Name: ONE-STOP FINANCIAL	AT&T Branch
Contact Name/Title: MR. AL INGA	Contact Name/Title
Address: 55 MAIN ST.	Address
City: LITTLE FALLS State: N.J. Zip Code: 07424	City State Zip Code
Contact Phone Number: (201) 256-5399	Contact Phone Number
800#(s): 800 245-1826 + ALL OTHERS	Customer Account No.

The terms of service, list prices, and Term Plan Discounts are provided in the Tariff. The Term Plan Discount rates listed below are in place of the term plan or similar discount rates provided in Section 6.13.4 of AT&T Tariff F.C.C. No. 1. A summary of Tariff terms, and additional terms and conditions, are listed on the back of this form.

Term	Inbound Discount	Domestic Outbound Discount	International Outbound Discount
☐ Monthly	35%	35%	35%
☒ 12 Months	41%	38%	40%
☐ 24 Months	43%	40%	40%
☐ 36 Months	45%	42%	40%

Net Average Monthly Commitment Level:

AI ☒ $200 ☐ $1,000 ☐ $3,000 ☐ $5,000 ☐ $7,000

The Net Average Monthly Commitment must be met each month, subject to annual review. If the commitment is not met, a bill will be rendered for the difference between the committed amount for the period, and the actual billed amount. Certain calls such as directory assistance, 900 and conference calls do not count towards meeting the commitment.

THE SERVICE AND PRICING PLAN YOU HAVE SELECTED WILL BE GOVERNED BY THE RATES AND TERMS AND CONDITIONS IN THE APPROPRIATE AT&T TARIFFS AS MAY BE MODIFIED FROM TIME TO TIME. YOUR SIGNATURE ACKNOWLEDGES THAT YOU UNDERSTAND THE TERMS AND CONDITIONS UNDER WHICH THE SERVICE SELECTED WILL BE PROVIDED AND THAT YOU ARE DULY AUTHORIZED TO MAKE THE COMMITMENT AND TO ORDER SERVICE FOR EACH OF THESE LOCATIONS.

Customer Authorized Signature: * Alfonse D'Inga Pres.

Date: 8/24/95

Branch Manager Signature

Date

Form CT-3

BP-811 [illegible] © AT&T 1994 • Printed in the U.S.A.

Al

s requested that I fax the following information to you,
cating those accounts he moved from one RVPP plan to another
ck in March, 1995.

To keep track of the large volume of orders we had coming in to our office at the time, our customer service department created a report form. On this report form you will see 9 columns. I will briefly explain each column so that you may understand how we kept track on status sent to and returned from AT&T.

*Comp= means complete, we write the date the order was sent back by AT&T Minneapolis Front End Center as complete.

*Rej= reject, here we write the date indicating that the order was sent back by AT&T as a reject.

Code #= means code number, it is the number assigned to the order, which would then be filed in numerical order. It was also a way for AT&T to file copies of the written orders we faxed to them.

Rep= means what report group sent in the request, so that we would therefore fax it back to the proper agent. In this case, we used an H, which stands for home, meaning the request was a home office request.

R/M/O= stands for Readyline, Masterline, or Other.

Company name= stands for the name of the first company name on the tracking log. With our request to move accounts, rather than log in the company name, we used the account number. The account number you see logged in is the first account number listed on one tracking log in a list of moves. Each tracking log consisted of approximately 10-20 account numbers. One code number represented a request for anywhere from 10-20 accounts.

WHAT= stands for what type of request we were sending in. A repoint request, a disconnect request, an addition to the plan or deletion from the plan, etc.

TF dt= the date on tracking log

Sent= the date we faxed to the request to AT&T Minneapolis Front End Center.

Although the original paperwork has been tossed, we are providing you with these report forms as proof that the request to move accounts to AT&T was made and that they did provision our request.

REPORT FORMS

*Comp	*Rej	Code#	Rep	R/M/O	Company Name	WHAT	TF dt	Sent
		~~1821D~~		Move	from 3524 to 2829			
		1822D	h	Move	131001701611		3/13	3/13
3/31		1823D			131050560 6743			
3/31		1824D			131118730 5028			
3/31		1825D			404 0054229230			
3/31		1826D			131038056 2379			
3/31		1827D			131069 2148365			
3/31		1828D			131008 4783404			
3/31		1829D			131097 5390193			
3/31		1830D			503100 7601152			
3/31		1831D			131027 0712253			
3/31		1832D			504 101 00899 58			
3/31		1833D			131117 5611990			
3/31		1834D			131129 6153271			
3/31		1835D			131012 9350120			
3/31		1836D			131025 3164189			
3/31		1837D			131065 6194508			
3/31		~~1838D~~			131086 4435683			
3/31		1839D			131101 0993131			
3/31		1840D			131015 5976531			
3/31		1841D			131003 8541925			
3/31		1842D			131012 4311268			
3/31		1843D			131019 5184486			
3/31		1844D			131030 7357070			
3/31		1845D			131040 6222859			
3/31		1846D			131047 7815222			
3/31		1847D			131055 5026377			
3/31		1848D			131060 3274015			
3/31		1849D			131068 3118001			
3/31		1850D			131074 3581872			

REPORT FORMS

*Comp	*Rej	Code#	Rep	R/M/O	Company Name	WHAT	TF dt	Sent
3/31		2151D	h	Move	131106 8877277		3/14	3/14
3/31		2152D			131130 6916295			
3/31		2153D			131128 1210597			
3/31		2154D			131010 9657992			
3/31		2155D			131043 2573279			
3/31		2156D			131079 3245236			
3/31		2157D			131091 2467540			
3/31		2158D			131017 4641387			
3/31		2159D			305071 0819695			
3/31		2160D			131069 4316942			
3/31		2161D			131123 1832407			
3/16		2162D	h	O	Stokley Map Caps	R		
3/15		2163D	'	'	Ergo Desk	R		
		2164D		Move	1583 to 2829			
3/31		2165D	h	move	131015 3688817	move		
3/31		2166D			131076 7821927			
3/31		2167D			602101 3469783			
3/31		2168D			131052 5047457			
3/31		2169D			131016 4899599			
3/31		2170D			131103 7150264			
3/31		2171D			213008 0796148			
3/31		2172D			131014 8237009			
3/31		2173D			131063 2405695			
3/31		2174D			186569 3153053			
3/31		2175D			131017 0661868			
3/31		2176D			131003 1628921			
3/31		2177D			131091 9504103			
3/31		2178D			131129 7409759			
3/31		2179D			131 072 5131 706			
3/31		2180D			131 037 7173218			

Combined Companies, Inc.

April 23, 1996

Ms. Andrea Anton
AT&T Specialized Markets
4450 Rosewood Drive - Room 5155
Pleasanton, CA 94588

Delivered Overnight Delivery

Dear Ms. Anton:

This letter is Combined Companies, Inc.'s (CCI) follow-up to its February 28, 1996, letter whereby it again submitted an order to have an EXTENSION OF TERM COMMITMENT granted on each of the following Customer Specific Term Plan IIs (CSTP IIs) that are presently active and/or in force:

Plan ID #'s: 3663, 2430, 2829, 3524, and 3124

This order for an Extension of Term Commitment was previously submitted as provided for within AT&T FCC filed Tariff No. 2, 2.5.7.

This on-going, and yet un-acted upon order, is necessitated by the governmental orders affecting availability of 800 numbers, as well as the extraordinary traffic erosion suffered by these plans over the past year ($4.1 Million collectively per month, to $1.1 Million) thereby creating circumstances that are materially affecting these plans that are now, and remain, beyond CCI's control, and thus a need for a term extension. This on-going order to extend these plans is neither inconsistent with the intent of the tariff, nor unusual for AT&T - which routinely grants business downturn extensions to its customers. The traffic erosion is a direct result of AT&T's failure to provision the accounts associated with the above referenced plans to Contract Tariff No. 516, as ordered by CCI in January 1995, as well as the direct solicitation by AT&T of CCI's customers to other direct pricing plans with AT&T.

Should AT&T refuse to extend these term plans, CCI has enclosed herewith a Network Services Commitment form(s) to facilitate the timely restructure, without penalty of any kind, of another two of the pre-June 17 plans - plan Nos. 3524 and 2430, in addition to plan Nos. 2829 and 3124 which have already been restructured as of March 1, 1996. This additional precaution is taken to avoid any problem associated with these plans, that might occur as a result of AT&T's on-going refusal to process any of our legal order(s) dealing with these plan(s).

In closing, and notwithstanding this order for an Extension of Term Commitment and/or Restructure, CCI does not rescind or cancel any previously submitted order and/or Transfer of Service Agreement (TSA) by CCI directly, or as Agent for Winback and Conserve Program Inc.

(Winback), to AT&T for discontinuance of these plans into Public Service Enterprises of PA, Inc. (PSE) Contract Tariff No. 1470, or movement of traffic from these plans into PSE's Contract Tariff No. 516 - which is the subject of an existing legal action between CCI and AT&T in Federal District Count.

Sincerely,

Larry G. Shipp
President

/LGS
Enclosures

Post-it® Fax Note 7671	Date 4-24	# of pages ▶
To Larry Shipp	From Andrea Anton	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 305-726-2707	Fax #	

April 23, 1996

TO: Larry Shipp

FROM: Andrea Anton

SUBJECT: SHORTFALL

Larry, .

Recently we have had a great deal of activity regarding the AT&T CSTP II term plans subscribed to by Combined Companies Inc. (CCI). In the course of our examination of two of these plans, Plans 2829 and 3124, significant shortfall is eminent.

Both plans have an anniversary date of April 1, 1996. This means AT&T will count usage from the May 1, 1995 invoice (April usage) to April 1, 1996 invoice(March usage) towards the retirement of your annual commitment to us. My preliminary findings show an estimated shortfall of $11,200,000.00 on Plan 2829 and $8,200,000.00 on Plan 3124. I have used the following calculations to come to this estimate:

Plan 2829

Anniversary: 4/1/96
Commitment: $21,000,000

Total Term Plan Revenue (5/95 to 2/96):	$8,394,967.14
Estimated Plan Revenue for 3/96	705,032.86
Estimated Plan Revenue for 4/96	700,000.00
Total Actual & Estimated Revenue	$9,800,000.00
Estimated Shortfall	$11,200,000.00

Plan 3124

Anniversary: 4/1/96
Commitment: $12,000,000

Total Term Plan Revenue (5/95 to 2/96)	$3,281,799.00
Estimated Revenue for 3/96	258,200.87
Estimated Revenue for 4/96	260,000.00
Total Estimated Revenue	$3,800,000.00
Estimated Shortfall	$8,200,000.00

Prior Month Revenue(s) Used for Estimate

Month	Plan 2829	Plan 3124
1/96	$543,124.13	$196,651.01
2/96	612,772.03	210,534.59

The Total Term Plan Revenue figures were obtained from the March 1996 RVPP report (2/96 Invoice). The estimated revenues for March and April 1996 were based on a liberal application of prior months actual revenue. The actual revenue figures for March and April 1996 will be used to determine the final shortfall amounts. This amount will appear on your June 1,1996 invoice.

<In addition it appears two of your other plans, Plans 2430 and 3524, will also be in shortfall on their June 1, 1996 anniversaries. Using the same methodology I estimate Plan 2430 to have a $5,000,000.00 shortfall and Plan 3524 a $3,800,000.00 shortfall.>

If you have any questions regarding my findings, or any of the plans themselves, please call me on 510-224-6560.

cc: C. Fash
D. Hollenbeck
J. Andrews
T. Schaeffer
O. Booker
R. Williams

Combined Companies, Inc.

April 25, 1996

Ms. Andrea Anton
AT&T
4450 Rosewood Drive
Pleasanton, CA 94583

Delivered Via Facsimile

Dear Andrea,

I have just this date received your fax, dated April 23, which arrived here late in the evening on April 24th, in which it was suggested that Combined Companies, Inc. (CCI) plan(s) Nos. 2829 and 3124 are somehow in danger of imminent shortfall.

Andrea, I believe this overlooks the fact that CCI has already restructured these plans (as well as Plan Nos. 2430 and 3524) as it his done on numerous occasions before without any problem (see copy of previously submitted Network Services Commitment forms following).

Of note, as you requested, I tried to call you (if I had a problem) and received your voice mail indicating you were basically out of pocket for the next two weeks. I'm surprised you were away, and equally surprised you didn't call me and advise me of your fax, and thereby give me a chance to comment before sending it. Perhaps we could have settled the issue over the phone.

At any rate, let's clear this up like we did the last shortfall notice, which also turned out to be incorrect. May I hear back from you at your earliest convenience.

Sincerely,

Larry G. Shipp

/LGS

FAX Transmission

From: Larry G. Shipp
Questions? Call 305-726-2668
Fax 305-726-2707

Combined Companies, Inc.
7061 West Commercial Boulevard,
Suite 5K
Tamarac, FL 33319

To: Al Inga
Company: Winback & Conserve
Address:
Date: May 14, 1996
Time: 1:50 PM

Message: **URGENT - PLEASE DELIVER TO MR. AL INGA**

Al - as discussed please find the "letter" from AT&T that I assume is in direct response to my inquiries dealing with the credits for CCI.

I am struck by AT&T's continued ignorance in not following either their own words; or their tariffs.

Let's huddle this afternoon and discuss a response. I would think minimally I would write a letter back to Mr. Williams and advise Mr. Williams that we DO NOT OWE $20 MILLION (perhaps we should also involve Judge Politan).

Enclosure(s)

FAX Transmission

From: Larry G. Shipp
Questions? Call 305-726-2668
Fax 305-726-2707

Combined Companies, Inc.
7061 West Commercial Boulevard,
Suite 5K
Tamarac, FL 33319

To: Mr. Al Inga
Company:
Address:
Date: May 23, 1996
Time: 3:28 PM

Message: CONFIDENTIAL - Please deliver to Mr. AL Inga

Al - this letter is in response to AT&T's Andrea Anton call received today.

cc: Chuck Helein, Esq.

Combined Companies, Inc.

May 23, 1996

Ms. Andrea Anton
AT&T
4450 Rosewood Drive
Room 5388
Pleasanton, CA 94583

Delivered Via Facsimile

Dear Andrea,

First, thank you for returning my call, and as well, giving me a "heads-up" on what AT&T is planning to do with regard to Combined Companies, Inc.'s (CCI) supposed shortfall on its CSTP II plans(s) (Nos. 2829, and 3124).

*As I mentioned to you today, and previously advised you via letter on April 25, 1996 (copy enclosed), CCI was entitled, under its agreements, and the tariffs governing those agreements, to restructure its plans - which it did in a timely and appropriate manner. Therefore, pursuant to AT&T's on tariffs, THERE **IS NO SHORTFALL** ASSOCIATED WITH THE PLANS IN QUESTION. I have, also, addressed this very issue in a letter to Mr. Carl Williams, AT&T District Manager, on May 17, 1996.*

Please be advised that CCI views AT&T proposed charge back to CCI, and/or its customers, as a serious mistake; and therefore, if enacted, an intentional and willful breach of AT&T's contractual obligations to CCI. I therefore urge AT&T to investigate this issue further, prior to taking this highly inappropriate unilateral action.

In closing, and as mentioned today, CCI has not received its RVPP Reports for any of its other plans (other than 2829) this month. And therefore respectfully advises AT&T that it has not received anything approaching formal notice of any pending shortfall on plan 3124. Also, I am not sure that CCI will have any "input" in the process of how it wants this invalid shortfall "allocated", since CCI absolutely believes it does not owe it! However, I will advise you if we have a position on that issue by Tuesday, May 28, 1996 - which you agreed was OK.

Sincerely,

Larry G. Shipp
President

/LGS

Enclosures

ID:

Attachment 3

Combined Companies, Inc.

June 18 1996

Mr. Carl Williams
AT&T
5000 Hadley Road
South Plainfield, NJ 07080

Delivered Via Facsimile

Dear Mr. Williams:

I have been advised by our customer service representatives, that in their fielding of calls today from end-users, that AT&T has posted a "true-up charge" on our end-users invoices. I am also advised that AT&T is informing these very disgruntled customers that CCI instructed AT&T to put these charges on the invoice. This statement is simply not true, and AT&T knows that to be the case.

I encourage you to correct this misrepresentation immediately; and have at least the courage of your convictions to tell the end-users the truth. AT&T took this action because it wanted too; and because it could! And, no matter that this destructive action, which if found to be incorrect, will have served no other purpose, than for AT&T to have put another bullet into a business it has already killed!

Let me restate, once again, that these plans, in which these customers were located, are plans that CCI was allowed, pursuant to AT&T filed FCC Tariff(s) to restructure - which we did. Therefore, CCI was, and is, in full compliance with the "terms and conditions" of our tariffed obligations to AT&T. But, even if AT&T disagrees as to the merits of our restructure; or if it disagrees with our position that shortfall is inappropriate in this instance, clearly the right thing for AT&T to do was to allow the legal processes, which we began over 15 months ago, to reconcile these disputes. Not through the "kill em at any cost" strategy that AT&T is seemingly employing.

It would appear, however, that AT&T has no desire to do the right thing; rather it only has the desire to put companies like CCI out of business - through its continued uneven application of tariffs, and often blatant discrimination. While at the same time, attempting to starve our will to resist, by the unilateral withholding of monies that are due us - without any due process.

Mr. Williams, If AT&T measures the success of its position by the aggravation it has caused my company, or my customers, as we are driven out of business; or if success is measured by the number of companies that have rolled-over as the AT&T juggernaut comes marching through - then I suppose the company has had a good year. But, on the other hand, even

Mr. Carl Williams
AT&T
June 18 1996

AT&T will have to stand-up one day to the scrutiny of what was truly the right and wrong thing to do beginning back in December 1994, and thereafter, in its dealings with CCI: Just as will CCI. This will be the day when someone other than AT&T - like a jury, a court, or the Federal Communications Commission - will decide who was right, and who was wrong.

I look forward to that day.

Sincerely,

Larry G. Shipp

/LGS

Combined Companies, Inc.

June 18, 1996

Ms. Jan Binch
AT&T
Account Inquiry Center (AIC)
Houston, TX

Delivered Via Facsimile

Dear Ms. Binch:

I am writing this letter to memorialize a series of disturbing events that have come to my attention that apparently involve your offices and/or other AT&T billing inquiry centers.

Our customer service representatives who have been fielding calls from irate end-users owing to AT&T's unilateral posting of "true-up" charges on their invoices, have been advised by these end-users of the following:

1. *"that CCI is responsible for the "true-up" charges being placed on the end-user bill and directed AT&T to place them there";*
2. *"that AT&T legal will contact (the end-user) directly within 5 to 7 days of AT&T position on this issue";*
3. *"that (the end-user) does not have to worry about paying these charges, because they end up being the responsibility of the aggregator";*
4. *"ignore the charges, I'll send you a revocation of billing letter, and you can come back to AT&T directly";*

As you might imagine, these statements quoted directly from end-users, that have called our customer service offices in New Jersey to find out "what's going on", are more than troubling if found to be true.

Let me set the record straight.

Combined Companies, Inc. (CCI), is the plan holder for certain AT&T tariffed plans, including those affected by the supposed "true-up" charges in question. However, the plans are not in shortfall; and therefore are not subject to "true-up" charges. In fact, to the contrary.

CCI exercised its rights under the AT&T filed FCC tariffs governing these plans, and restructured these plans prior to any tariffed requirement for "true-up". This action, which has been routinely accomplished by numerous AT&T customers (both resellers and commercial customers alike), was addressed, and provided for, in tariff filings by AT&T back in 1994, when it grandfathered this right

for all plans in existence prior to June 14, 1994 (which included all of CCI's plans). Specifically the tariffs allow for the term plan(s) held by CCI (or any other customer with a pre-June 14th plan) to be extended, without penalty of any kind - thereby avoiding any tariffed requirement for annual "true-up".

It is therefore very disturbing to CCI that AT&T would so insensitively impose a shortfall/true-up charge on CCI's customers, without the conclusion of due process that was begun between our companies some 15 months ago. Especially when there is more than a "slight chance" that AT&T might be found to be wrong in this instance.

You should know, not that it will necessarily change your marching orders, that CCI requested AT&T not to rush into this decision, and thereby avoid the very problems that its unilateral actions have now created.

And it isn't bad enough that we have to deal with end-users who are being hit with these manufactured "true-up" charges, our customers are also advising us that AT&T is telling them that AT&T will have a "written response" to them directly about this issue within 5 or 7 days. Let me stress the inappropriateness of AT&T's continuing mis-information campaign with our customers.

Be advised that CCI requests, in the strongest way, that NO CONTACT occur with our customers, other than referring them to us (which is AT&T's procedure when questions arise concerning a resellers customer).

Finally, we are also advised that AT&T is denying access to the account inquiry center, and advising our customers that they must "fax their complaint" into the center (as opposed to fielding their calls). This is totally unacceptable and blatantly inappropriate. No end-user customer of CCI's should be denied access to the billing center to raise a question (or complain, if appropriate) about AT&T's practices and customer service for end-users within a CCI plan. They are entitled to the very same level of customer service that is available for any of AT&T's other customers. Please ensure that this remains the case.

Please advise me by return facsimile as to AT&T's compliance with our requests.

Sincerely,

Larry G. Shipp

/LGS

Attachment A

Combined Companies, Inc.

June 25, 1996

Mr. Charles H. Fash
Senior Attorney
AT&T
293 North Maple Avenue
Basking Ridge, NJ 07920-1001

Delivered Via Facsimile

Dear Mr. Fash:

Although it is, perhaps, inappropriate, given that we have open litigation between our companies; I none-the-less felt compelled to personally answer your letter to me, dated June 18, 1996 - appropriate or otherwise.

I begin to understand why you answered letters that were not sent to you, but, I am hard pressed to understand why you didn't address the real theme of those letters.

Very simply, why didn't AT&T let the disputes between our companies resolve themselves in the Federal Communications Commission or the Federal Courts? There was never any need to involve the thousands of end-users the way AT&T has by rushing to judgement, and placing the "disputed true-up charge" on their bill. You have control of our money; you invoice our customers! You had total control of the situation. AT&T did not need to do what it has done.

Yes, but, "our tariffs compelled you to act", you say. Well, this instant interpretation is problematic as well. Mr. Fash, as much as you want it to be so, does not make it so. In fact, there are numerous instances where AT&T has made a tariff pronouncement on this, that or the other subject; only to be found wrong in its interpretation. Therefore, as sincere as I believe you believe your position to be, as it relates to YOUR INTERPRETATION of FCC No. 2. Can you not see that it is more than possible that YOUR INTERPRETATION is WRONG And then what a shame to have bashed CCI and its customers so unnecessarily.

Combined Companies, Inc. (CCI) is just as convinced (just as sincere), and we believe we have significant evidence that will show, that not only does AT&T "understand that CCI could restructure" as we did - as restructure is a common-place occurrence within AT&T (for both commercial customers and "selective resellers"); but additionally, we have numerous instances that we can point to whereby AT&T told us how to do it - "as our plans were always going to be pre-June 17, 1994 plans". Not only that, but CCI wrote several letters to AT&T personnel who were right on the front lines, and pressed the notion that reflection was necessary, and that CCI denied either it, or its customers, were subject to any "true-up" liability. But, not one person stopped to listen.

With regard to the issue you raised regarding the appropriateness of a certain letter dated June 17, 1996, to which you attribute its intent as defamatory, and to which you demand we cease its distribution. You should know that CCI had already requested that its New Jersey customer service representatives stop sending the specific memo that you addressed - other than one which explains in plain english that CCI disputes the charges levied against its customers, and asked [illegible] to place them the bill in the first place. We did this, not because we necessarily agree with any conclusion you now draw with regard to the accuracy of the facts, but rather because its the right thing to do.

As to setting the record straight with our customers. You really couldn't possibly believe that the obligation to "set the record straight" is OURS do you? I mean, do you REALLY! My God. AT&T exercises it power, without any consideration for the possibility that you might be found WRONG; and when end-users react as they are (and as AT&T knew they would), you want CCI to "set the record straight". Unbelievable!

Mr. Fash, yesterday morning I received 47 certified letters from customers, and over the past week, I have received hundreds and hundred of phone calls (some of which I have personally spoken to the end-user). And 99.9% of them have told me that AT&T advised them, incorrectly I might add, that "CCI put the charge on their bill". Or that CCI didn't "pay its bill" to AT&T. Or, "Not to worry", AT&T will issue a new account number, and "CCI will end up with the bill". And, how about this one, "It's CCI's fault - not AT&T". Not one of them ever mentioned to me that AT&T had advised them that CCI and AT&T were involved in an honest dispute. Not one customer advised me that they were told that by AT&T.

I find these customers, although very angry, very understanding when they begin to understand some of what is going on, and in some cases they have even been sympathetic; and I personally feel they believe CCI when we tell them truthfully that we did not want the charge to go on their bill, nor, however, did we want it to go on our bill - we simply wanted the dispute to be settled in another way (i..e. the courts, or FCC). And that sir, was something that AT&T could have done. It has selectively done so in the past, when the magnitude or the consequences were not nearly so significant as they are now (without a declaration from the aggregator to the "When was the last time you beat your wife" type question about placement of the "true-up charges").

In closing, our customer service representatives have suffered as well. They have been cursed

at: threatened and treated like they themselves ordered the placement of these disputed charges on the customers bills. I've heard them cry, and slam phones down in disgust, because they feel helpless as they try to reason with a riled up end-user who's been armed by someone they trust (AT&T), with lots of mis-information.

It is not right what has happened.

Perhaps you, or someone at AT&T will soon realize, there is nothing righteous about AT&T's conduct in this circumstance, and certainly nothing right about the results. Soon, hopefully, sanity will surely prevail. Perhaps then this continued intensitivity and "kill em at any cost" mentality against people who honestly disagree with AT&T, can be stopped, while at the same time allowing those honest differences between our companies to be settled on the "high ground".

Sincerely,

Larry G. Shipp
President

/LGS

P.S. For your information, and for the record, neither CCI, nor any other aggregator, are the source of the word "restructure". That world was birthed by AT&T's product management personnel, and freely written about within AT&T (and is a business tactic that is widely used, I might add).

Combined Companies, Inc.

July 3, 1996

Mr. Charles H. Fash
AT&T
205 North Maple Avenue
Basking Ridge, NJ 07920-1001

Delivered Via Facsimile and Certified Mail

Dear Mr. Fash:

I am in receipt, via facsimile, of your letter and attachments, dated July 3, 1996. And once again I find much of it factually incorrect. Additionally, although the letter raises numerous issues, I only want to address one specific issue at this time.

Combined Companies, Inc. (CCI) has at no time, within any communication or correspondence, ever requested AT&T to bill CCI for "shortfall charges" that we do not believe we owe. Nor, I might add, have we directed AT&T to invoice the end-users within certain of CCI's term plan for these charges. In fact, and you personally know this to be the case (as CCI itself has advised you, and others at AT&T), we steadfastly believe the charges to be invalid, and therefore inappropriate on any invoice! That is, and has been our stated position! How you could arrive at any other opinion on that issue, based on our communication is incredible to me.

Therefore, you are hereby advised that you should also NOT CONSTRUE any of CCI's concerns for AT&T's insensitivity, and rush to judgment, as a request to have ANY charges billed to CCI (or as you put it, "your presumed preference that the charges be posted to your headquarters accounts rather than to the end-user location accounts....."). No sir! AT&T created this problem by "enforcing its tariffs" as it deemed "appropriate and enforceable" - so stand up and comply with them!

Mr. Fash, as a Senior AT&T attorney, how can you attempt to so recklessly apply your clients view of the construction of AT&T's very own tariffs against CCI so certainly; and also, turn right around, almost in the same breath, and incorrectly construe our own words against us. Do you not have any desire, or responsibility, to advise your client that sometimes its actions should be weighed, and reconciled, against the facts, before acting!

If AT&T believes its claims for shortfall against CCI (and therefore its end-users) are

valid - your tariffs obligate AT&T to aggressively pursue the collection of these charges, exactly and precisely, as you have invoiced them. You made that decision in the first place. These are your words; and how you yourself have personally construed AT&T's responsibility and obligations. I quote from your letter of June 18, 1996, where you so carefully explained the righteousness of AT&T's position, and its responsibility thereunder, and I quote .... "any penalty for shortfall and/or termination will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan" (see also AT&T filed FCC Tariff No. 2, 3.3.1.Q, page 61.17).

What ever AT&T did, or plans to do, it does of its own accord. Therefore, AT&T, and AT&T alone will be responsible for the appropriateness of its actions. Not CCI. Not its end-users. But AT&T. I don't know how much clearer we need be on this issue.

Finally, CCI has no intention now, nor in the future, to request AT&T to either invoice, or not invoice, one party in favor of another, when it is, and has been, our unwavering position that neither party (CCI or its end-users) is responsible for these "true-up" charges. We have only asked that AT&T enforce its tariffs - for or against CCI - UNIFORMLY AND FAIRLY, without bias and prejudice - just as you would do for any other AT&T customer! And, since we do not believe you have done this in our case, it is the basis of our legal actions against AT&T, and will be the basis for our attempts at justice before the FCC.

In closing, I have forwarded you letter, and its attachments, to my attorney for his review. I'm certain the appropriate responses will be forthcoming. However, since I'm personally not comfortable with your previous interpretations of my letters, I am providing a copy of the correspondence, including this response to other(s) who might ultimately be involved, or can influence, the resolution of these issues.

Sincerely,

Larry G. Shipp
President

/LGS

cc: Federal Communications Commission
Mr. Robert Allen, President and CEO, AT&T

FAX Transmission

From: Larry G. Shipp
Questions? Call 305-726-2668
Fax 305-726-2707

Combined Companies, Inc.
7061 West Commercial Boulevard,
Suite 5K
Tamarac, FL 33319

To: Mr. Al Inga
Company: Winback & Conserve Program, Inc.
Address:
Date: July 8, 1996
Time: 10:56 AM

Message: Please deliver to Mr. Al Inga

Al - the following was sent via fax to Charles Fash (Wednesday, July 3, 1996 in response to his fax late Wednesday; Note I also cc'd Robert Allen and FCC).

I have also "drafted" a response to the issue of "slamming" which is so bogus its almost unbelievable.

Let's talk during the day.

cc: Chuck Helein, Esq.

Account Number	Bill Date	Payment Due Date
615 101-3021 130	JUN 01 1996	JUN 26 1996

AT&T

Other Charges and Credits

ITEM	DESCRIPTION	AMOUNT
1.	AT&T TERM PLAN PERIODIC TRUE UP CHARGE	5,879.22
	TOTAL OTHER CHARGES AND CREDITS (EXCL TAX)	5,879.22

FAX Transmission

From: Larry G. Shipp
Questions? Call 305-726-2668
Fax 305-726-2707

Combined Companies, Inc.
7061 West Commercial Boulevard,
Suite 5K
Tamarac, FL 33319

To: Al Inga
Company:
Address:
Date: July 31, 1996
Time: 12:17 PM

Message: Important - Please deliver to Mr. Al Inga

Al - please review the following DRAFT of the Carl Williams letter.

I sent a copy to Chuck for his review and comments.

Enclosure(s)

Combined Companies, Inc.

July 30, 1996

Mr. Carl Williams
AT&T
5000 Hadley Road
South Plainfield, NJ 07080

Delivered Via Facsimile and US Mail

Dear Mr. Williams:

We have been advised by the customer services offices in New Jersey that AT&T is advising customers (including Combined Companies, Inc. (CCI)) that it is changing its long standing policy and procedures for crediting wrong number calls and/or incomplete calls. It is our understanding that AT&T has implemented this new procedure effective as of July 1, 1996. The new procedure, as I understand it, is for CCI is to notify AT&T that it is willing to have CCI's RVPP/CSTP II plan(s) debited for the credits that are going to be placed on end-user's bills

Hopefully we are mistaken, but it would appear that this "new procedure" is not being implemented for all customers who subscribe to the same or similar generally available tariffed offerings to which CCI subscribes. But only for "resellers", whereby, according to AT&T the customers (end-users) are those of the "reseller", and therefore do not have a direct relationship with AT&T.

I am very interested in where within AT&T tariffs does it state, or even suggest, that companies that subscribe to generally available tariffs, such as those subscribed to by CCI (see AT&T FCC Tariff No. 2, Customer Specific Term Plan II / Revenue Volume Pricing Plan) automatically somehow become "resellers", or must receive different treatment than other Customers.

Therefore, please be advised that CCI is very concerned about this change, and believe it is only one more example of AT&T's continued selective interpretation of CCI's rights under the tariff offerings to which it now subscribes. Which, among others, include receiving the same benefits and services offered to any Customer, with no distinction being tariffed for those that are within generally available AT&T tariffed term plans (such as those subscribed to by CCI). Or was it AT&T's specific intention, in implementing this "new procedure" to simply pose another nuisance to many customers who, for over five (5) years now have been obtaining these credits from AT&T directly? It is no wonder, an end-user is unwilling to want to be included in these plans any longer.

Mr. Williams, when will AT&T cease its "customer of convenience" interpretation against CCI and the many locations with our term plans? It's incredible, and quite frankly, outrageous behavior!

restructure →

When we try to move these locations to better plans with deeper discounts, or exercise some other tariffed right which has been done numerous times by other AT&T Customers, AT&T denies us that right - indicating that we have no right to do this (or that); while, at the same time, advising each customer that is beset with a problem, and are within a CCI AT&T CSTP II Term Plan, that they can not be helped by AT&T, as they are not a customer of AT&T's.

CCI has no intention, now or in the future, of conceding to AT&T, based on AT&T's selective interpertation of the tariff, that it must now provide AT&T with authorization to "credit" customers (by debiting CCI) within CCI's AT&T CSTP II Term Plans. However, CCI most certainly authorizes AT&T to continue to do what it has done for years, and we believe still does for others, credit (without debiting) routine wrong number and incomplete calls as part of its "customer service" to its loyal customers. We ask for no more, nor no less!

In closing, if AT&T continues in its implementation of this new credit/debit procedure, then clearly AT&T has the mechanism in place to additionally debit CCI for certain designated locations that we wish to continue to receive their discounts - which we understand AT&T is unilaterally planning to stop. Therefore, CCI will provide AT&T with a list of designated locations that it authorizes AT&T to debit CCI the amount of the "discount" we pass through, since selected locations will be paying CCI directly (less the appropriate discount, which we want them to continue to receive).

Please advise me at your earliest convenience to whom within your department we should send our list to next month (or whenever you stop applying the discount to locations within our plan(s)).

Sincerely,

Larry G. Shipp

/LGS

Enclosure(s)

Combined Companies, Inc.

January 22, 1997

Ms. Sharon DeMills
AT&T Specialized Markets
795 Folsom St., Room 308
San Francisco, CA 94107

Delivered Overnight Delivery

Dear Ms. DeMills:

Mr. John Andrews, Market Manager, AT&T Specialized Markets has identified you as our "new" Account Manager. Accordingly, this letter is Combined Companies, Inc.'s (CCI) follow-up to its February 28, 1996 and April 23, 1996, letters to Ms. Andrea Anton, our previous Account Manager, whereby CCI again submits its order to have an EXTENSION OF TERM COMMITMENT granted on each of the following Customer Specific Term Plan IIs (CSTP IIs) that are presently active and/or in force:

Plan ID #'s: 3663, 2430, 2829, 3524, and 3124

This order for an Extension of Term Commitment is submitted as provided for within AT&T FCC filed Tariff No. 2, 2.5.7.

This on-going, and yet un-acted upon order, is necessitated by the extraordinary traffic erosion suffered by these plans over the past year and a half ($4.1 Million collectively per month, to $550,000 per month today) thereby creating circumstances that are materially affecting these plans that are now, and remain, beyond CCI's control, and thus a need for a term extension. This order to extend these plans is neither inconsistent with the intent of the tariff, nor unusual for AT&T - which routinely grants business downturn extensions to its customers. The traffic erosion is a direct result of AT&T's unlawful failure to provision the accounts associated with the above referenced plans to a higher discount plan provided for by Contract Tariff No. 516, as ordered by CCI in January 1995, as well as the direct solicitation and tortuous interference by AT&T with CCI's customers.

Should AT&T continue to unlawfully refuse to extend these term plans, CCI has enclosed herewith a Network Services Commitment form(s) to facilitate the timely restructure and continuation, without penalty of any kind, of a "grandfathered" pre-June 17, 1994 plan - plan No. 3663. This additional precaution is being taken by CCI to avoid any problem associated with this plans, that might occur as a result of AT&T's on-going refusal to process any of our legal order(s) dealing with these plan(s).

In closing, and notwithstanding this order for an Extension of Term Commitment and/or Restructure, CCI does not rescind or cancel any previously submitted order and/or Transfer of Service Agreement (TSA) by CCI directly, or as Agent for Winback and Conserve Program Inc. (Winback), to AT&T for discontinuance of these plans into Public Service Enterprises of PA, Inc. (PSE) Contract Tariff No. 1470, or movement of traffic from these plans into PSE's Contract Tariff No. 516 - which is the subject of an existing legal action between CCI and AT&T in Federal District Count and before the Federal Communications Commission (FCC).

Sincerely,

Larry G. Shipp
President

/LGS

Enclosures - Network Services Commitment Form - Plan ID #3663

FAX Transmission

From: Larry G. Shipp
Questions? Call 305-726-2668
Fax 305-726-2707

Combined Companies, Inc.
7061 West Commercial Boulevard,
Suite 5K
Tamarac, FL 33319

To: Mr. Chuck Helein, Esq.
Company: Helein & Associates
Address:
Date: January 23, 1997
Time: 11:56 AM

Message: Important - Please Deliver to Mr. Chuck Helein, Esq.

Chuck - the following is for your files.

As you will note, we have submitted a restructure order (and Extension of Term Plan request) to AT&T on Plan ID #3663 which completes its 23rd month of service this month. The revised commitment level - based on commitment remaining is $3,250,000 (or $1,200,00 per year, for hree (3) years).

If you have any questions - please call (as I will not be sending in this order until 6PM EST today).

Enclosure(s) -

cc: Mr. Al Inga, Winback & Conserve

Combined Companies, Inc.

April 28, 1997

Mr. John Andrews
AT&T
55 Corporate Drive
Bridgewater, NJ 08807

Delivered Via Overnight Delivery

Dear Mr. Andrews:

Combined Companies, Inc. (CCI), by this letter, hereby submits its continuing order to facilitate the timely restructure/upgrade, without penalty of any kind, effective April 30, 1997, with a start date of May 1, 1997, CCI's pre-June 17 plans - Plan Nos. 3524 and 2829, as well as Plan Nos. 3124 and 2430.

This order is consistent with AT&T practices over the last eight years and filed pursuant to CCI's tariffed rights under the tariffs to which it subscribes.

In closing, and notwithstanding these orders for reduction of commitment and/or Upgrade/Restructure, CCI does not rescind or cancel any previously submitted order and/or Transfer of Service Agreement (TSA) by CCI directly, or as Agent for Winback and Conserve Program Inc. to AT&T for discontinuance of these plans into Public Service Enterprises of PA, Inc. (PSE) Contract Tariff No. 1470. Or the right to movement of end-user traffic from these plans into PSE's Contract Tariff No. 516 - which is the subject of an existing legal action between CCI and AT&T in Federal District Count and before the Federal Communications Commission.

Sincerely,

Larry G. Shipp
President

/LGS
Enclosures

To: Al Inga

cc: Jeff Sharon

Combined Companies, Inc.

Confidential Memorandum

To: Mr. Al Inga
Winback & Conserve Program, Inc.

Fm: Larry G. Shipp

Date: April 29, 1997

Re: CSTP II Term Plan Extensions

Al - please provide me any comments on the DRAFT letter to John Andrews by 4PM today's date, so that I can evaluate any comments for possible inclusion in my letter to Mr. Andrews.

I must have your comments (as well as those of Chuck Heline and your other attorneys) by 4PM so that I can ensure this the letter gets out to John today (for overnight delivery).

Also - please see the following letter that I received today from AT&T dealing with the placing of "shortfall" on Plan No. 3663 - in spite of our restructuring; and despite our pending declaratory ruling before the FCC (sort of reminds me of the way Judge Roy Bean administered justice - kill 'em, then find out if they did it).

Finally, I will be meeting with the CCI board today to review the "lawyer contingency plan" you drafted. I will advise what our thoughts are immediately after the meeting.

Dear Ed: MAY 24th/letter

Mr. Larry Shipp as of yesterday has informed me that AT&T account manager Andrea Anton was given a question by the legal department as follows: "Where do you want the shortfall penalty assessed, on your main bill or on all the end-users' accounts under the plans?" This question is akin to "When was the last time you beat your wife?

Mr. Shipp has told Ms. Anton that no shortfalls are to be applied, so her most presumptuous question is of course irrelevant.

Before you go ahead and actually place these illusionary charges, where no service was ever provided on these plans I will document for the court the following facts; which you are not at this time aware of, but soon will be, so as you may make a more educated decision before delivering the final death blow.

I am aware that you must now start placing the penalty on the plans account(s) in the end of May so it shows up for your unilateral announcement that the penalty will show up on the June '96 invoice(s).

Since however you will not get to start reading the transcripts of the audio tapes before you go ahead with your decision to place the fictitious penalties I am advising you of the following.

The audio tapes clearly indicate that restructures are common at AT&T; that no penalties are assessed on restructures, no matter how many times after June 17, 1994 they are restructured.

The tapes clearly show that since April of 1994 we have not been allowed to take in end-user accounts who have a term contract on the plan, because restructures were treated as not being a new plan. As you are aware if restructures were considered a new plan we would have been able to bring in those end-users onto our plan without penalty.

Since 80% of the market place volume is on a term contract, this decision by your entire business department to preclude us from marketing to all of these customers along with several other factors has led to "theoretical shortfall." Thus we have been forced to restructure due to AT&T's own fault. — our contracts further outward in time

Therefore, if what the AT&T legal department says is true that restructures are new plans then what is also true is that AT&T has illegally precluded us from marketing to 80% of its customers for over two years!!

You will hear on the tapes that the attorneys in the AT&T legal department are now the only ones at AT&T who believe that restructures are new plans. Your own in house counsel Mr. Charles Fash had agreed that restructures were not new plans, and that once a plan was Grandfathered it remained Grandfathered! This was earlier demonstrated when Andrea Anton worked with him in deciding that we properly restructured on time to avoid the "non service provided" penalties.

It was only after you and Mr. Whitmere had to "re-educate" Mr. Fash and Ms. Anton that their story has now changed.

The audio tapes show that the following AT&T business managers statements and practices clearly determine that restructures are not new and no penalties can be assessed: Ron Orem, Joe Fitzpatrick, Maria Nascimiento, Thomas Freeberg, Joyce Suek, Lisa Hockert, Janis Bina, Deb Kibby, Anne Johnson, Patti Van Vickle, Tom Umholtz, and Greg Brown.

Even the AT&T legal department itself never made the ridiculous argument in over a year before the courts that a grandfather pre-June 17, 1994 plan that restructured somehow becomes un-grandfathered until AT&T's 2nd brief to the Court of Appeals, on May 1, 1996.

Section 2.5.7

The tapes also make it clear that I had a valid reason to invoke Section 2.5.7 Extension of Term Commitment, due to circumstances beyond the customer's control. Even if AT&T rejected the restructuring argument, AT&T could not place penalties on these plans because I placed all of these plans under 2.5.7 on June 5, 1995, and was never denied. AT&T in all of its brief also never denied that 2.5.7 would not apply. The tapes also reveal that all the accounts on a plan can be moved without the plans' liabilities moving also.

Now that you will be shortly receiving knowledge of how your entire business operations have been run, I would expect that you at least postponed your decision to inflict penalties until after you listen to all of the tapes of your people.

To mistakenly place non-service provided penalties on either our main bill or on the thousands of innocent end-users without carefully weighing all the facts will not, in our opinion, be looked upon by the court too favorably.

It would be quite absurd for AT&T who has demanded that they have the transcripts of these tapes to now proceed with fictitious non-service provided penalties without carefully reviewing all the tapes.

The tapes will show that AT&T has made misrepresentations to us, Judge Politan, The Appeals Court, and the FCC.

The messages that I left on your voice mail regarding the tapes were not meant to intimidate you, they were an accurate portrayal of devastating material which makes AT&T look like it has misrepresented itself to the Federal Court, The Appeals Court and the FCC.

The tapes also show that the accounts could easily be distinguished if accounts were moved then had to be moved back. Your "scrambled egg theory" comment to Judge Politan was but another misrepresentation.

The tapes clearly show that 2 years ago I knew that these plans could not go into shortfall. Thus the alleged statement that I was going to seek Bankruptcy Protection because of shortfall makes absolutely no sense!! The fact is I never made such a statement. It was just an AT&T ploy to try to establish that some type of fraud was being perpetuated.

The tapes clearly show that ATN, a fellow aggregator, was waived of all their shortfall charges on their CT 1849. Former AT&T Account manager Joseph Fitzpatrick with 29 years at AT&T inexplicably was able to help Gary Carpenter have all of the shortfall penalties waived.

June 27, 1996

Letter from AT&T to all CCI end-users

Thank you for your recent inquiry regarding the "Periodic True-Up Charges" that appeared on your telephone bill. AT&T realizes that this charge may come as a surprise. Please allow us a moment to explain the entire situation to you.

AT&T's records reflect that you are a customer of Combined Companies, Inc. (CCI) and not a direct customer of AT&T. Companies like CCI routinely purchase service from AT&T, and other carriers, at volume discounts which they then resell to businesses like yours under terms and prices with which AT&T is not familiar. In other words, CCI is a customer of AT&T, while your company is a customer of CCI (or of an intermediate reseller to which CCI may provide service).

AT&T files tariffs with the Federal Communications Commission (FCC) that spell out customer requirements and commitments. In the case of the service CCI has purchased from AT&T, CCI is liable for shortfall charges if it does not meet its annual revenue commitment, which is what has happened. (You should know, however, that CCI disputes these charges.)

The tariff provides that shortfall charges should be billed initially on a prorated basis to all locations on CCI's plans. Although AT&T offered to bill CCI directly, CCI declined the suggestion. The shortfall charges were then billed to CCI's customers to comply with the tariff requirement. These charges will soon be transferred to a bill directed to CCI itself. Until CCI pays these charges, the discounts otherwise received under AT&T's tariffs will be applied to offset the shortfall charges. As a result, these discounts likely will not appear on the bills prepared by AT&T, at least for an interim period.

AT&T understands that CCI has issued letters to some of its customers urging them to contact the FCC on this matter by sending a fax to 800-338-0409. Of course, you should feel free to contact whomever you wish about this matter. You should know, however, that the number CCI has furnished is not the FCC's. Instead, it appears this number terminates at a CCI fax machine.

AT&T apologizes for any hardship or inconvenience this episode may have caused for you or your business. If you have any questions about this matter, we suggest you contact your carrier, CCI, directly.*

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* CCI's address is 7061 West Commercial Boulevard, Suite 5K, Tamarac, Florida 33319, its telephone number is 305-726-2666, and its fax number is 305-726-2707.

EXHIBIT O

AT&T COMMUNICATIONS
Adm. Rates and Tariffs
Bridgewater, NJ 08807
Issued: October 19, 1993

CONTRACT TARIFF NO. 516
2nd Revised Page 3
Cancels 1st Revised Page 3
Effective: October 20, 1993

** All material on this page is reissued unless otherwise noted. **

CONTRACT TARIFF NO. 516

1. Services Provided - AT&T Software Defined Network (SDN) Services, Global SDN (GSDN) Service and AT&T 800 Services consisting of: AT&T 800 Service-Domestic, AT&T 800 Service-Canada, AT&T 800 Service-Mexico, AT&T 800 Service-Overseas, AT&T MEGACOM 800 Service, AT&T MEGACOM 800 Service-Canada, AT&T MEGACOM 800 Service-Mexico, AT&T MEGACOM 800 Service-Overseas, AT&T 800 READYLINE, AT&T 800 READYLINE-Canada, AT&T 800 READYLINE-Puerto Rico and the U.S. Virgin Islands, AT&T Advanced 800 Service, AT&T 800 Validator and AT&T 800 Gold Services and AT&T Terrestrial 1.544 Mbps Local Channel Services.

Initial Requirement - The Customer, within the previous 12-month period prior to the effective date of this Contract Tariff, must have billed at least $6,500,000 in AT&T telecommunications services applicable to Contract Tariffs; with at least 30,000,000 minutes being AT&T SDN Service. Of the 30,000,000 minutes, at least 60% must have been generated from Rates Schedules B, C and/or D. C

2. Term of Contract; Renewal Options - The term of this Contract Tariff is three-years beginning with the Customer's initial Service Date; no renewal option.

3. Minimum Commitments - The Minimum Commitments for SDN and AT&T 800 Services may be satisfied by all usage and/or revenues that qualify for the Expanded Volume Plan (EVP) and the Customer Specific Term Plan II.

A. Minimum Volume Commitment -

1. SDN Service - The Minimum Volume Commitment (MVC) for SDN Services is 23,000,000 minutes per year for each year of the three-year term.

2. SDN Card - The MVC for SDN Card is 1,000,000 minutes per year for each year of the three-year term.

3. AT&T 800 Services - The MVC for AT&T 800 Services is 15,000,000 minutes per year for each year of the three-year term.

4. SDN International Calling Capability Service - The Minimum Volume Commitment (MVC) for SDN International Calling Capability Services is 1,000,000 minutes per year for each year of the three-year term.

B. Minimum Annual Charge - The Minimum Annual Charge (MAC) for all AT&T Services offered under this Contract Tariff, is $4,000,000 per year, after all applicable discounts have been applied, for each year of the three-year term.

Material filed under Contract Tariff Transmittal Nos. 696 and 721 is advanced to October 20, 1993 under authority of Special Permission No. 93-904.

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4. **Contract Price** - The Contract Price for SDN Services and GSDN is the same as specified in AT&T Tariff F.C.C. No. 1, as amended from time to time, with the same discounts as Expanded Volume Plan (EVP) Part IX, except for the Usage Rates for SDN Direct Dialed Interstate Calls under SDN Rate Schedules A & A-PV, B & B-PV and C. The Usage Rates for SDN Direct Dialed Interstate Calls under SDN Rate Schedules A & A-PV, B & B-PV and C are as follows with the same discounts as EVP Part IX.

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4. Contract Price - (continued)

Rate Schedule A

Rate Mileage	Rates: Initial 18 Seconds or Fraction			Rates: Each Additional 6 Seconds or Fraction		
	Day	Evening	Night	Day	Evening	Night
0-5750	$0.0549	$0.0549	$0.0549	$0.0183	$0.0183	$0.0183

Rate Schedule A-PV

Mileage Bands	Rates: Initial 18 Seconds or Fraction			Rates: Each Additional 6 Seconds or Fraction		
	Day	Evening	Night	Day	Evening	Night
1,2,3,4,	$0.0549	$0.0549	$0.0549	$0.0183	$0.0183	$0.0183

Rate Schedule B

Rate Mileage	Rates: Initial 18 Seconds or Fraction			Rates: Each Additional 6 Seconds or Fraction		
	Day	Evening	Night	Day	Evening	Night
0-5750	$0.0393	$0.0393	$0.0393	$0.0131	$0.0131	$0.0131

Rate Schedule B-PV

Mileage Bands	Rates: Initial 18 Seconds or Fraction			Rates: Each Additional 6 Seconds or Fraction		
	Day	Evening	Night	Day	Evening	Night
1,2,3	$0.0393	$0.0393	$0.0393	$0.0131	$0.0131	$0.0131

Rate Schedule C

Rate Mileage	Rates: Initial 18 Seconds or Fraction			Rates: Each Additional 6 Seconds or Fraction		
	Day	Evening	Night	Day	Evening	Night
0-5750	$0.0255	$0.0255	$0.0255	$0.0085	$0.0085	$0.0085

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4. Contract Price (continued)

The Contract Price for the AT&T 800 Services is the same as specified in AT&T Tariff F.C.C. Nos. 2 and 14, as amended from time to time, with the same discounts as specified for a three-year, $600,000 per year, Revenue Volume Pricing Plan (RVPP)/Customer Specific Term Plan (CSTP) II, except for Usage Rates for AT&T MEGACOM 800 Service and AT&T 800 READYLINE. The Usage Rates for all Rate Periods for AT&T MEGACOM 800 Service is $7.05 per hour, with the same discounts as specified for a three-year, $600,000 per year, RVPP/CSTP II. The Usage Charges for all Rate Periods for AT&T 800 READYLINE is $10.36 per hour, with the same discounts as specified for a three-year, $600,000 per year, RVPP/CSTP II.

The Contract Price for the Terrestrial 1.544 Mbps Local Channel Services are the rates as specified in AT&T Tariff F.C.C. No. 11, as amended from time to time.

5. Volume Discounts - The following discounts will apply after all other discounts have been applied:

A. SDN Domestic Direct Dialed Service - An additional 15% discount will apply to SDN Domestic billed usage, excluding SDN 0+ Card and Software Defined Data Network (SDDN) usage, from $0 to $400,000 per month. No additional discount will be given on amounts over $400,000.

B. SDN International Calling Capability and GSDN Service - An additional 12% discount will apply to the SDN International Calling Capability and GSDN Service monthly usage, excluding SDN Calling Card, Network Remote Access (NRA) and SDDN-International usage.

C. Except as provided in Section 6.E. following, the Customer will be ineligible for any other promotions specified in AT&T Tariff F.C.C. Nos.1 and 2, as amended from time to time for the AT&T Services offered under this Contract Tariff.

6. Classifications, Practices and Regulations -

A. Except as otherwise provided, the rates and regulations set forth in AT&T Tariff F.C.C. No. 1, pertaining to SDN Services; and in AT&T Tariff F.C.C. Nos. 2 and 14, pertaining to AT&T 800 Services; and in AT&T Tariff F.C.C. No. 11, pertaining to Local Channels Services, apply, as these tariffs may be amended from time to time.

B. Credits - The Customer will receive a credit of $480,000 each in the 2nd, 14th and 26th month following the Customer's initial Service Date.

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6. **Classifications, Practices and Regulations** - (continued)

C. **Monitoring Conditions** - The Customer must maintain the following Monitoring Conditions for each year of the three-year term. These Monitoring Conditions will be monitored on each anniversary of the Customer's initial Service Date.

1. At least 95% of the Customer's current and future inbound and outbound services under the Customer's control, applicable to Contract Tariffs, must be AT&T Services.

2. All Local Channel Services under the control of the Customer, associated with the inbound and outbound Services provided under this Contract Tariff, must be provided or coordinated by AT&T, except for the Local Channels provided by an access provider at rates that are lower than the AT&T rates for comparable services.

If the Customer has failed to maintain the above Monitoring Conditions during the previous twelve month period, all Volume Discounts specified in Section 5., and Credits specified in Section 6.B. preceding, received during the previous year, will be forfeited and must be paid by the Customer within 30 days.

D. **Shortfall Liabilities** - Shortfall liabilities will be monitored on each anniversary of the Customer's initial Service Date.

1. **SDN Service** - If the Customer fails to meet the AT&T SDN Services MVC in the previous year, the Customer will be billed for all additional discounts received under Section 5. preceding for that year.

2. **SDN Card** - If the Customer fails to meet the SDN Card MVC in the previous year, the Customer will be billed for all additional discounts received under Section 5. preceding for that year.

3. **AT&T 800 Services** - If the Customer fails to meet the AT&T 800 Services MVC in the previous year, the Customer will be billed $.09 per minute for 75 % of unsatisfied MVC for that year.

4. **SDN International Calling Capability Service** - If the Customer fails to meet the SDN International Calling Capability Service MVC in the previous year, the Customer will be billed for all additional discounts received under Section 5. preceding for that year.

5. **Minimum Annual Charge** - If the Customer fails to meet the MAC in the previous year, the Customer will be billed the difference between the MAC and the actual billed charges for that year.

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6. Classifications, Practices and Regulations - (continued)

E. Customers of this Contract Tariff are eligible for the SDN International Loyalty Plan (ILP) specified in AT&T Tariff F.C.C. No. 1, as amended from time to time.

F. **Nonrecurring Charges** - Nonrecurring Charges, not to exceed $350,000, for Terrestrial 1.544 Mbps Local Channels used with AT&T SDN Service and/or AT&T 800 Services offered under this Contract Tariff, will be waived provided that each such Terrestrial 1.544 Mbps Local Channel remains in service for (12) consecutive months and bills at least $30,000 per year in discounted SDN Service and/or AT&T 800 Services usage. If the Customer discontinues any Terrestrial 1.544 Mbps Local Channel prior to the (12) months following installation and/or fails to bill at least $30,000 per year in discounted SDN Service and/or AT&T 800 Services usage, the Customer will be billed for the waived Nonrecurring Charges for that Terrestrial 1.544 Mbps Local Channel.

G. **Discontinuance Without Liability** - The Customer may discontinue this Contract Tariff without liability prior to the expiration of the three-year term of this Contract Tariff, provided the Customer replaces this Contract Tariff with other AT&T Services or AT&T Term Plans applicable to Contract Tariffs and/or another Contract Tariff with an equal or greater term, volume and revenue commitment. The Customer is required to notify AT&T in writing thirty (30) days prior to discontinuing this Contract Tariff. The Customer may also discontinue this Contract Tariff without liability if AT&T, without prior Customer approval, files revisions to this Contract Tariff that materially and adversely affect the Customer, provided that the Customer may not so terminate if AT&T within 30 days of written notice by the Customer revises this Contract Tariff to remove such material and adverse conditions.

H. **Discontinuance With Liability** - If the Customer terminates in their entirety either the AT&T SDN Service or AT&T 800 Services prior to the expiration of the three-year term, this Contract Tariff will automatically terminate and Termination Charges will apply. For SDN Services and AT&T 800 Services, the Termination Charge will be 75% of the unsatisfied MVCs for the remaining term of this Contract Tariff multiplied by $.06 per minute or 100% of the unsatisfied MAC for the unexpired portion of this Contract Tariff, whichever is greater.

I. **Availability** - This Contract Tariff is available to any similarly situated Customer who places an order within 90 days after the effective date of this Contract Tariff and who requests an initial installation no later than 90 days after the order date.

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